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September 3, 2019

FILED ELECTRONICALLY VIA ECF

Honorable Valerie E. Caproni, U.S.D.J.
United States District Court
40 Foley Square, Room 240
New York, New York 10007

Re: Docket No. 19 Civ. 1857 (VEC)
COOGI Partners, LLC v. NBA Properties, Inc., et al.

Dear Judge Caproni:

In accordance with Your Honor's directive at the initial Pre-Trial Conference (4/26/19), the parties respectfully submit the following joint status report for the month of August, 2019 (Report No. 4).

General Matters

The parties continued to discuss settlement throughout the month, including exchanging written settlement proposals. On August 8 the parties conferred telephonically with Magistrate Judge Freeman regarding their settlement efforts, and have an in-person settlement conference with the Magistrate Judge, to be attended by client representatives, scheduled for September 11.

On August 8, the NBA Defendants served their Reply Memorandum of Law in further support of their motion to dismiss the amended complaint.¹

¹ The "NBA Defendants" are all of the Defendants other than NIKE.

Hon. Valerie E. Caproni, U.S.D.J.

2

September 3, 2019

Plaintiff's Discovery

Plaintiff previously reported that it had served information subpoenas on Google, Bing and Yahoo! regarding the purchase, sale and/or use of AdWords containing the word "Coogi." Plaintiff continues its discussions with the subpoena recipients regarding their anticipated responses.

On August 1, the NBA Defendants served their objections and responses to Plaintiff Coogi's interrogatories.

On August 6, Plaintiff initiated discovery deficiency discussions with the NBA Defendants regarding certain of their objections to Plaintiff's First Set of Requests for Production of Documents. Plaintiff awaits the NBA Defendants' response to the deficiencies raised in its letter and intends to confer with the NBA Defendants regarding those matters as soon as the NBA Defendants respond.

Plaintiff also intends to confer shortly with Nike about the deficiencies raised in Plaintiff's June 24 deficiency letter to Nike concerning its objections to Plaintiff's document requests, and NIKE's July 23 response to Plaintiff's letter, as well as additional deficiencies to be raised by Plaintiff with respect to Nike's document production to date.

On August 7, Nike served its objections and responses to Plaintiff's interrogatories.

On August 28, Plaintiff produced documents in response to Nike's document request.

Other than a small initial tranche of documents produced by Nike (which includes a substantial number of documents previously provided to Nike by Plaintiff), Plaintiff has not received any other documents from Nike, nor have the NBA Defendants produced any documents in response to Plaintiff's document requests.

During the month, counsel for Plaintiff agreed to accept service of Nike's document and deposition subpoenas addressed to non-parties Gene Therapy Group, Inc. and Willie Montanez. Mr. Montanez was identified in Plaintiff's initial disclosures. Gene Therapy served its objections and responses to Nike's document subpoena on August 29. Willie Montanez' response to Nike's document subpoena will be served today or tomorrow (the agreed due date). Dates for the non-party depositions await discussion.

Hon. Valerie E. Caproni, U.S.D.J.

3

September 3, 2019

Plaintiff also is considering dates for expert disclosure proposed by Nike.

Defendants' Discovery

- **Expert Discovery**

On August 22, 2019, Defendants contacted Plaintiff to confirm dates for disclosing experts under Rule 26(a)(2)(B), Fed. R. Civ. P. Specifically, Defendants proposed:

(1) November 15, 2019, as the deadline for Plaintiff to disclose the identity of the witnesses it may use as experts at trial and accompanying written reports, and

(2) December 13, 2019, as the deadline for Defendants to disclose the identity of the witnesses it may use as experts at trial and accompanying written reports.

- **Subpoena to Gene Therapy Group, Inc. and Willie Montanez**

NIKE issued subpoenas for depositions and documents to Willie Montanez and Gene Therapy Group, Inc., which Plaintiff identified in its Rule 26(a)(1) Initial Disclosures. Plaintiff's counsel agreed to accept service of the subpoenas on behalf of these entities. Plaintiff's counsel also requested an extension of time to respond to the subpoenas. NIKE agreed to the requested extension.

- **Plaintiff's Document Production in Response to NIKE's Discovery Requests:**

Plaintiff represented to NIKE that it would produce documents in response to NIKE's discovery requests on July 30, 2019. Plaintiff notified NIKE on July 30 that it experienced some delays and expected to "begin production within the next couple of weeks." NIKE agreed to the requested extension. Over four weeks later, on August 28, 2019, Plaintiff produced documents in response to NIKE's first set of requests for production.

Plaintiff has yet to produce critical documents requested by NIKE and the NBA Defendants. NIKE is in the process of memorializing the deficiencies in a letter to Plaintiff to facilitate a meet and confer on these issues. NIKE is hopeful it will not need Court intervention.

Hon. Valerie E. Caproni, U.S.D.J.

4

September 3, 2019

- **Plaintiff's Document Production in Response to the NBA Defendants' Discovery Requests:**

Similar to NIKE's report above, Plaintiff represented to the NBA Defendants that it would produce documents in response to the NBA Defendants' discovery requests on August 15, 2019, but did not do so. Rather, Plaintiff notified the NBA Defendants on August 15, 2019 that it had "encountered some delays" and expected "to begin production within the next couple weeks." To date, Plaintiff has not produced documents responsive to the NBA Defendants' requests, aside from forwarding a copy of the documents produced to NIKE on August 28, 2019.

On August 29, 2019, the NBA Defendants sent a deficiency letter to Plaintiff, identifying numerous issues in Plaintiff's written responses to the NBA Defendants' interrogatories and document requests, and commenting generally on Plaintiff's August 28, 2019 production of documents purportedly responsive to NIKE's requests. The parties intend to schedule a time next week to meet and confer in attempt to resolve these discovery issues without Court intervention.

- **NIKE's Document Production in Response to Plaintiff's Discovery Requests:**

NIKE timely produced documents in response to Plaintiff's discovery requests on July 12, 2019. These documents include sales information for the accused products, internal design documents relating to the accused products, marketing documents relating to the accused products, information relating to key word purchases, etc.

NIKE responded to Plaintiff's deficiency letter on July 23, 2019. NIKE's response explained why Plaintiff's position lacked merit. Plaintiff has not substantively responded to NIKE's July 23 letter. Regardless, NIKE is hopeful that any issues Plaintiff may raise can also be resolved without Court intervention.

- **NBA Defendants' Document Production in Response to Plaintiff's Discovery Requests:**

The NBA Defendants are in the process of collecting and reviewing documents for production in response to Plaintiff's discovery requests. The NBA Defendants intend to produce documents on a rolling basis, beginning the week of September 16, 2019, if not sooner.

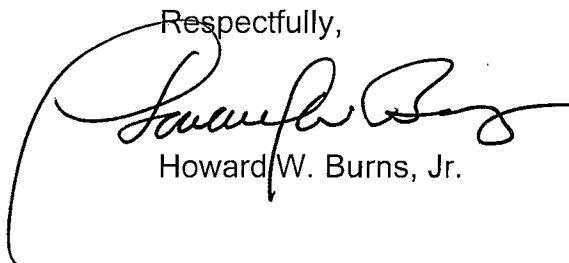
Hon. Valerie E. Caproni, U.S.D.J.

5

September 3, 2019

The NBA Defendants received a deficiency letter from Plaintiff on August 6, 2019 concerning their written responses to Plaintiff's document requests and is in the process of preparing a response to facilitate a meet-and-confer next week.

Respectfully,

A handwritten signature in black ink, appearing to read "Howard W. Burns, Jr.", with a large, sweeping initial "H".

Howard W. Burns, Jr.

cc: All Counsel Via ECF